

REMARKS

Claims 1-11 were examined and reported in the Office Action. Claims 1-11 are rejected. Claims 1 and 8 are amended. Claims 1-11 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. § 103(a)

A. It is asserted in the Office Action that claims 1-11 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over U. S. Publication No. 2004/0186713 to Gomas et al. ("Gomas") in view of U. S. Publication No. 2005/0015255 to Kaye et al. ("Kaye") and further in view of official notice. Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." Further, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to

do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007). Additionally,

[a] statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

Gomas discloses a portable electronic device that includes text-to-speech conversion that disabled people can use in situations, such as blindness, illiteracy, etc. Gomas has specific interfaces for the client to download content from a server. Kaye is relied on for disclosing a user profile including user disabilities.

It is asserted in the Office Action that it is obvious to provide users with an interface. Applicant notes, however, that an *open* API is much different than an API that is not open. Further, Applicant’s open API communication service is advantageous in that the open API that provides a function of allowing existing and third party application services to safely and easily accesses the network and use network resources, independently from the characteristics of the network. Therefore, because a great number of application services use the network resources, a network service provider can create a new business model capable of providing benefits and application services according to the use of the network resources. Applicant submits that it would not be obvious to add an open API to a combination of Gomas and Kaye as existing and third party application services would not be able to access the resulting invention’s network independently from characteristics of the network.

Further, in comparison with Applicant's claimed invention, Gomas relates to a portable electric device that includes a text-to-device converter and converts contents in memory voice/text depending on the input information of a user. Gomas doesn't use any information of communication features of disabled or non-disabled people. And Gomas doesn't relate to communication service that is operated between at least two users in real time.

Additionally, it is asserted in the Office Action that Kaye relates to using the communication characteristics between disabled or non-disabled people. But, there are a lot of differences between Applicant's claimed invention and Kaye in the view that the User profile and Equip profile used in Kaye is different from the communication characteristics of Applicant's claimed invention. Also, Kaye relates to method for giving remote service using the paper processing device and doesn't relate to communication between users.

As a result, Gomas and Kaye don't give real time communication service and the terminals used in Gomas and Kaye are more complicated and expensive than Applicant's claimed invention.

Even if Gomas, Kaye and an interface are combined, the resulting invention would still not teach, disclose or suggest Applicant's amended claim 1 limitations of "the open API communication interface operates to allow existing and third party application services to access the wired/wireless integrated network independently from characteristics of the wired/wireless integrated network," nor Applicant's amended claim 8 limitations of "the open API communication service operates to allow existing and third party application services to access a network, that the terminals communicate with, independently from characteristics of the network."

Moreover, by viewing the disclosures of Gomas and Kaye, one can not jump to the conclusion of obviousness without using impermissible hindsight. According to MPEP 2141.01, "[t]he requirement 'at the time the invention was made' is to avoid impermissible hindsight."

‘[i]t is difficult but necessary that the decisionmaker forget what he or she has been taught ... about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the art.’ W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Applicant submits that without first reviewing Applicant’s disclosure, no thought, whatsoever, would have been made to Applicant’s claim 1 limitations of “the open API communication interface operates to allow existing and third party application services to access the wired/wireless integrated network independently from characteristics of the wired/wireless integrated network,” nor Applicant’s amended claim 8 limitations of “the open API communication service operates to allow existing and third party application services to access a network, that the terminals communicate with, independently from characteristics of the network.”

Further, the assertions made in the Office Action on page 3 that lead to a conclusion of obviousness are not explicit as required by MPEP 2142 and the basic requirements of an articulated rationale under MPEP 2143 cannot be found (see also *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) “noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.”). And, since neither Gomas, Kaye, the Examiner’s official notice, and therefore, nor the combination of the three, teach, disclose or suggest all the limitations of Applicant’s claims 1 and 8, Applicant’s claims 1 and 8 are not obvious over Gomas in view of Kaye in view of the Examiner’s official notice since a *prima facie* case of obviousness has not been met under MPEP §2142. Additionally, the claims that directly or indirectly depend on claims 1 and 8, namely claims 2-7, and 9-11, respectively, are also not obvious over Gomas in view of Kaye in view of the Examiner’s official notice for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection for claims 1-11 is respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-11 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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Dated: October 25, 2007

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.


Jean Svoboda

Date: October 25, 2007